

REMARKS

This amendment is submitted in response to the Office Action mailed April 27, 2007. Claims 1, 2, 5, 11, 27, 35 and 37 are amended. Support for the amendment is found in the specification at least at paragraphs 0032 and 0085. No new matter is added.

While applicants appreciate the withdrawal of the double-patenting rejection, applicants continue to direct the Examiner's attention to the prosecution of commonly-owned application No. 10/674,909, in which an office action has been issued rejecting the claims pending therein.

Rejections Under 35 USC § 103

1. Claims 1-26 were rejected as being unpatentable over the combination of Jakob et al. (US 5,101,839) in view of Schneider et al (US 5,265,626) and further in view of Muller et al (US 6,257,243) and Schneider (US 5,379,789).

This rejection is overcome by the present amendment. Claim 1 has been amended to recite that the outer portion incorporates tobacco "in cut filler form." Jakob et al was relied upon in the rejection, as applied the same for claims 1 and 27, for teaching an outer portion incorporating tobacco, but Jakob fails to teach the use of tobacco in cut filler form in the outer portion. Rather, Jakob teaches the use of an outer portion comprising a reconstituted tobacco sheet manufactured using a paper-making process." (col. 5, lns. 1-4). Accordingly, applicants submit that independent claim 1 and its dependent claims 2-26 are patentable and the rejection should be withdrawn.

In addition, Claim 1 has been amended to incorporate the limitation from 11 that the wrapping material for the core portion exhibit an inherent porosity of more than about 100 CORESTA units, and claim 11 has been amended to recite 200 CORESTA units. The rejection merely relied upon the availability of such high porosity papers in the market (Office Action at p. 6). However, applicants respectfully submit the cited references teach away from the use of high porosity wrapping material for circumscribing the core portion. Muller teaches the use of low to medium porosity wrapping material less than 60 CORESTA units. Schneider ('626) teaches the use of "air impermeable" wrapping material for the core portion. (col. 4, lns. 25-27). Likewise, Schneider ('789) teaches low air permeability. (col. 3, lns. 60-63). Likewise, Jakob teaches the use of very low porosity wrapping materials, less than 5 CORESTA units. (col. 12, lns. 38-43). Accordingly, the overall teachings of the references lead one of ordinary skill in the art away from higher porosity wrapping materials as claimed in claim 1 and claim 11. For this additional reason, the rejection should be withdrawn.

2. Claims 27, 29-30, 32-34 and 38-49 were rejected as being unpatentable over the combination of Jakob et al. (US 5,101,839) in view of Schneider et al (US 5,265,626).

This rejection is overcome by the present amendment. Claim 27 has been amended to recite that the outer portion incorporates tobacco "in cut filler form." Jakob et al was relied upon in the rejection, as applied the same for claims 1 and 27, for teaching an outer portion incorporating tobacco, but Jakob fails to teach the use of tobacco in cut filler form in the outer portion. Rather, Jakob teaches the use of an outer portion comprising a reconstituted tobacco sheet manufactured using a paper-making process." (col. 5, lns. 1-4). Accordingly, applicants submit that independent claim 27 and its dependent claims 28-49 are patentable and the rejection should be withdrawn.

In addition, Claim 27 has been amended to recite that “the second burn suppressing agent is present in an amount and of a type to provide a degree of burn suppression in the core portion higher than a degree of burn suppression in the outer portion.” The rejection fails to note any teaching in the art of a higher degree of burn suppression in a core portion than in an outer portion of a cigarette rod as claimed. The Office Action admits that Schneider et al teaches the opposite, that the outer portion has a higher degree of burn suppression. For this additional reason, applicants submit that independent claim 27 and its dependent claims 28-49 are patentable and the rejection should be withdrawn.

3. Claims 28, 31 and 35-37 were rejected as being unpatentable over the combination of Jakob et al. (US 5,101,839) in view of Schneider et al (US 5,265,626) and further in view of Muller et al (US 6,257,243).

First, these claims are dependent on independent claim 27 and should be withdrawn for the reasons noted above.

Second, claim 37 is separately patentable for reciting that the wrapping material for the core portion exhibits an inherent porosity of more than about 100 CORESTA units. As noted above with regard to claims 1 and 11, the rejection merely relied upon the availability of such high porosity papers in the market (Office Action at p. 6). However, applicants respectfully submit the cited references teach away from the use of high porosity wrapping material for circumscribing the core portion. Muller teaches the use of low to medium porosity wrapping material less than 60 CORESTA units. Schneider ('626) teaches the use of “air impermeable” wrapping material for the core portion. (col. 4, lns. 25-27). Likewise, Jakob teaches the use of very low porosity wrapping materials, less than 5 CORESTA units. (col. 12, lns. 38-43). Accordingly, the overall teachings of the references lead one of

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ordinary skill in the art away from higher porosity wrapping materials as claimed in claim 37. For this additional reason, the rejection should be withdrawn.

Conclusion

Based on the above amendments and remarks, the Applicant submits that the claims are in condition for allowance. The examiner is kindly invited to contact the undersigned attorney to expedite allowance.

Respectfully submitted,



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